the High Court and we think there are materials on the record from which a decision to that effect could be arrived at. As one of the objects of modern pleadings is to prevent surprise, we cannot for one moment think that the defendant was taken by surprise. To condemn a party on a ground of which no material facts have been pleaded may be as great a denial of justice as to condemn him on a ground on which his evidence has been improperly excluded.

For this reason we allowed the appeal with costs here and below.

Appeal allowed.

Solicitors: *Dato Morris Edgar & Clough Thuraisingam; Kam Woon Wah & Co.*

HAJJAH HALIMAH BINTE HUSSAIN & ANOR. v. COLLECTOR OF LAND REVENUE, KUANTAN

[F.C. (Suffian L.P., Chang Min Tat & Syed Othman F.JJ.) December 8, 1980 & January 15, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 10 of 1980]

Land Law — Land acquisition — Value of land — Market value — Comparable sales — Appeal from trial court — Principles applicable.

In this case the Government had acquired certain lands including land belonging to the appellants. The Collector awarded $45,000 per acre. The appellants asked that the matter be referred to the High Court and in the High Court they asked for $4 per square foot or $174,240 per acre. The learned judge and one of the assessors valued the land at $50,000 per acre (the other assessor valued it at $60,000 per acre). The appellants appealed.

Held, dismissing the appeal: the learned judge had applied the right principles and had not acted on wrong principles; he had not misapprehended the facts which he detailed and weighed at length; nor had he made a wholly erroneous estimate of the value of the land.

Cases referred to:-

(1) *Nanyang Manufacturing Co.* v. *C.L.R. Johore* [1954] M.L.J. 69.

(2) *Collector of Stamp Duties* v. *Ng Fah In & Ors.* [1981] 1 M.L.J. 288.

The following authorities were also cited in argument: *Bertam Consolidated Rubber Co. Ltd.* v. *Deputy Collector of Land Revenue, Butterworth* [1965] 1 M.L.J. 171, 176; *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243.

HIGH COURT.

Teh Chin Yong and *A. Ramanathan* for the objectors.

Lamin bin Haji Mohamed Yunus, Legal Adviser, for the Collector of Land Revenue.

Abdul Razak J.: This is a reference to court under section 36(1) of the Land Acquisition Act on the owner's objection that the compensation awarded by the Collector was inadequate. The lands, the subject-matter of the acquisition, were acquired by the government for the proposed new hospital at Kuantan. The lots affected were 2182, 2183, 2184, 351, 2381, 2495 and 3409. For the purpose of the reference, only four were involved, Lots 2182, 2183, 2184 and 351. These were the subject of four separate references, Land References 6/77, 3/77, 4/77 and 5/77, in respect of Lots 2182, 2183, 2184 and 351 respectively. Land References Nos. 3/77, 5/77 and 6/77 had been consolidated. Land Reference No. 4/77 was heard separately by a separate set of assessors. For the sake of convenience and ease of reference, the judgment for 4/77 is given jointly here with the cases consolidated since except for the category of land used, all the other factors affecting the lands under the consolidation affect also Lot 2184 being in the same locality and subject to the same acquisition. I shall deal first with Land References 3/77, 5/77 and 6/77 in respect of Lots 2183, 351 and 2182 respectively.

The material date of their acquisition was May 4, 1973. The objector has asked for $40,000 per acre for Lot 2182, $45,000 for Lot 2183, $40,000 for Lot 2184 and $60,000 for Lot 351 respectively.

It is common ground in the government and private valuers' reports that the lands acquired are approximately three miles from Kuantan Town. Except for one, they all have frontage to Jalan Tengku Mohamed which is a road linking the main road to Beserah and Jalan Teluk Cempedak. The position of these various places is shown in the plan annexed to both the valuers' reports. They are about less than half a mile to Jalan Teluk Cempedak junction and about three quarter of a mile from the beach. The R.I.M.V. Office, the Assunta Convent, the Istana Mahkota of His Royal Highness, the Menteri Besar's residence and the golf course are roughly within half a mile radius from the lands concerned. The Istana Mahkota is located on Lots 9119 and 6823. The R.I.M.V. Office is on Lot 3394. The Menteri Besar's residence is along Jalan Teluk Cempedak on the fringe of the Government Co-operative Housing Society. With the exception of Lots 2183 and 351, the other lots including Lot 2182 are level, slightly above the road and rising gradually to the rear. Lots 2183 and 351 are about five feet above the road level but rising sharply to the interior to a small hill. At the date of the acquisition, the higher levels of these lands had been cut and cleared. They are, apart from the cutting of land, undeveloped and unmaintained. The lands to the right of Jalan Tengku Mohamed as one faces Jalan Beserah, are undulating and hilly and the lands to the left low and below the road level. The government valuer in his report said the lands along Jalan Tengku Mohamed are, generally considered to possess potential for first class residential development together with other institutional and governmental users. Lots 2381 and 2182 had approved planning permission for housing on March 19, 1966 and September 29, 1964 respectively. But no development had since taken place. In Lots 2183 and 351, layout plans for detached and semi-detached houses were submitted but not approved by the Town Planner. A noticeable fact is that lands to the left of Jalan Tengku Mohamed are relatively more developed than lands to its right as one faces Kuantan. There seems to be some dispute regarding the availability of essential services. According to the government valuer, public transport, water and electricity are not available or adequate whereas the private valuer says they are. He said that these services would in any event follow with development. There were hardly any private developments in this area. According to the

government valuer, the availability of lands still nearer to Kuantan and developments taking place there might explain for this trend. Both the valuers used the comparison method of valuation. The sale comparisons are annexed to their reports. The government valuer cited Lots 4281 and 4284 as the most relevant sales. He says the subject land itself is the best evidence of sales but says allowance must be given for the difference in time. Lot 2184 was sold in August 1972 at $20,000 per acre and Lot 351 at $18,000 per acre on June 9, 1972 about a year prior to the acquisition. Lot 4281 was sold in August 1973 at $21,687 and Lot 4284 was sold for $25,647 in April 1973 about a month before the acquisition. The following must be said, however, of Lots 4281 and 4284. According to the private valuer, he inspected the land in 1977. Lot 4281 had a stream running through it. Certain portions of Lot 4281 were lower than the level of the road. Lot 4284 was lower than the road level at the front. Consequently filling would be required for both these lands. These facts were not seriously challenged. These physical defects which I think would affect the price were apparently not within the knowledge of the government valuer, since no reference was made to them by him in his report or evidence. The category of land use was agriculture. No attempt had been made by the owners to develop them. The private valuer rested on Lots 9118, 3456 and 2386. The *bona fide* of Lot 9118 transaction, however, seems questionable. The government valuer had not considered Lot 9118 because, he said, he did not consider the sale as one in the open market. The purchaser was Tengku Ibrahim and the seller was Cik Hapsah, one a step son and the other a step mother respectfully. Lot 2386 was valued for conversion purposes where clearly different considerations would apply. Lot 3456 is not a fair comparison with the subject land. It is, firstly, not in the same locality, being not along Jalan Tengku Mohamed but along Jalan Teluk Cempedak. The land is clearly nearer to town along the main road, about half a mile away. It is a vastly much more developed locality. The Menteri Besar's residence, the State Secretary and the other senior officers' quarters were in the immediate vicinity. Lot 3456 is distinctly not of the same nature as the subject lot. Unlike the subject lands, it is flat and not undulating in quality. The value of Lot 3456 was further not truly representative of the market value since the price at $48,000 per acre was in November 1973 six months after the date of acquisition. Although after notification sales are not to be entirely ignored, pre-notification sales, as required by the Act, must be preferred. The price, according to the private valuer, was transacted during the boom period when transactions were, he admitted, somewhat speculative and fictitious. The private valuer has mentioned that the subject lands could also be utilised for selling the earth but this is somewhat a false premise upon which one should proceed to value the land. *Aggarawalla*, 4th ed. Vol. I, at page 345 said: —

"In valuing the land the method of valuing the first land and then adding thereto the value of the stone and earth removed for levelling is not a proper method."

He said, however,

"That where land has got high potential value as building site and it is justifiable to take the value of the land as a cleared site it would be necessary to add to such value the profit made from the disposal of the spoil after deferring this value for the time requisite to clear it and dispose of the spoil."

There is nothing to suggest, however, that any of these lands had got such high potential value as a building site. The owners of the land had not said so. This is confirmed also by the fact that little or no development for housing had taken place within the locality. But even if they had such potential, it does not necessarily follow that by present technique, the land would necessarily be cut because the houses might be built according to the shape of the land as in the case of split-level houses. In any event, a potential purchaser in buying a land would have considered also selling the earth. As *Sarkar* at page 346 said: —

"A purchaser in offering a rate will offer an all-inclusive rate which would include any profit he might derive from the higher elevation so that before it was levelled for building purposes he might have been able to sell the earth so removed."

The government valuer gave the values of Lots 2183 and 2182 at $25,000 per acre each which is almost exactly the price paid for Lots 4281 and 4284. He gave $22,500 for Lot 351 being a second-layer lot. I have already stated why I consider Lots 4281 and 4284 as being not exactly comparable to Lots 2183, 2182 and 351. Lots 2183 and 2182 have these added advantages. They are nearer to the centre of social amenities in the area which I consider to be the quieter and more prestigious residential part of Kuantan. The beach, the golf club, the Rest House and the public park are located there. These places must have some significant part to play, otherwise one cannot see why the Menteri Besar's residence, the Istana Mahkota and the senior government officers' houses were situated nearer to them rather than to the other side of Jalan Tengku Mohamed where Lots 4281 and 4284 were located. Lots 2183 and 351 have the added advantage of having obtained approval for housing. The government valuer had cited sales after the acquisition in 1974 of small pieces at $20,380 for Lot 3538 and Lot 3562 and $34,216 per acre for Lot 3547 but one must recognize the fact, as maintained by the private valuer, that these were small lots on the left side of Jalan Tengku Mohamed where it is commonly known the land is lower than the road level. Lot 2384, for instance, was stated by him to be three to five feet below the road level when considerable filling would consequently be required. In my view, the subject lots are, for the above reasons, slightly better lots than Lot 4281 and Lot 4284. Lot 2182 has, in my view, a slight advantage over Lot 2183 having been given approval for housing. Lot 351 is a second-layer lot and cannot be considered in the same category as Lots 2182 and 2183.

It had been urged before me that there had been another separate acquisition for Lot 351 on February 28, 1974 for which there should be a separate award having been acquired about nine months later in February 1974. The First Schedule of the Act provides, however, that the market value shall be determined as at the date of the publication of the *Gazette* under section 4 provided the *Gazette* Notification under section 8 was made within 12 months therefrom. Lot 351 was first acquired under sections 4 and 8 on

May 24, 1973. There was a second acquisition made on February 2, 1974 under section 8. The latter acquisition was thus made within twelve months of the one made under section 4 earlier and therefore the relevant date of acquisition for the second acquisition was also May 24, 1973. I would therefore determine the values of the subject lots at the date of acquisition as follows —

Lot 2182 @ $28,000 per acre;

Lot 2183 @ $27,000 per acre; and

Lot 351 @ $24,500 per acre.

The Collector's award is therefore increased proportionately. I would award also costs and interest. The assessors are in concurrence with me on the value of the award.

We now come to Lot 2184 under reference 4/77. What has been said so far regarding Lots 2182, 2183 and 351, except as otherwise hereinafter stated, applies also to Lot 2184. The government valuer had included this lot also in his omnibus report on the lands acquired for the General Hospital site. Lot 2184 is sandwiched between Lots 2182 and 2183. It has the same characteristics, advantages and disadvantages, if any, as Lot 2182 and Lot 2183. The only difference being that Lot 2184 had planning approval for a hotel whereas the other two had not. The government valuer conceded that he valued the land as essentially for a hotel, considering, I imagine, that it had been converted for hotel use. I gather, nevertheless, that he maintained that its potential or attraction for a hotel was somewhat dull. The approval for a hotel was given in 1970. Since then, however, nothing had been done to develop the land as such. The objector had not done so because he said he was not able to get a partner to do it. He conceded that the reason was perhaps Kuantan was not as attractive as it is today. The private valuer said he valued Lot 2184 at $4 per square foot. His basis were: —

(a) *the Suraya Hotel.* The land which is in the heart of Kuantan Town and purchased in 1974 at a price of $54 per square foot. In my view, this lot can nowhere be compared with the subject lot which is in secondary jungle three or four miles away;

(b) *Lot 630 along Jalan Beserah.* The transaction was $6.31 per square foot in November 1974. This land, in my view, is again nowhere comparable to the subject land because it is in a different locality altogether. The land is nearer to Kuantan Town, about three quarter of a mile away. The area is almost a continuation of Kuantan Town itself. The land is still not developed despite its alleged potentiality for housing;

(c) *Lot 2185* — This lot is nearer to the subject lot than Lot 630. There were transactions in August 1971 at $15,000 per acre, November 1973 at $56,216 per acre and December 1973 at $261,357 per acre. I shall deal with this lot in conjunction with Lot 2186;

(d) *Lot 2186* — This lot adjoins Lot 2185. It was purchased in February 1974 at $4.50 per square foot by the owners of Lot 2185. The following facts must, however, be said of these two lots — 2185 and 2186. They are on the right side of Jalan Teluk Cempedak and not along Jalan Tengku Mohamed. They are nearer to the beach and to the social amenities mentioned earlier. It is conceded by the objector that Lots 2185 and 2186 are in a better locality than the subject land. The government valuer says the transactions for Lots 2185 and 2186 are highly inconsistent with the trend of the market along Jalan Tengku Mohamed, which seems to be borne out by the surrounding facts. It is clear that none of the transactions thereat in 1973 or even 1974 of the same category of land use had recorded prices anywhere near the amount transacted by Lots 2185 and 2186. According to the government valuer in his report, the values were highly speculative and may have fallaciously influenced the claim of the objector which seemed to bear consistency. There was a sale of Lot 2185 at $1.30 per square foot in September 17, 1973 and subsequently at $6 per square foot on November 1973. There has been a phenomenal increase therefore of 460% in less than two months for an agricultural land. One cannot lose sight of the fact that these lands were still agricultural lands. One would note also that Lot 2186 was approved for a hotel according to a government valuer's report in 1966. There has, however, to-date been no development or even conversion of the land for a hotel. Lot 2186 had been bought by the owner of Lot 2185 to amalgamate it with the latter but neither has this lot been developed as such. The exceptionally high prices of Lots 2185 and 2186 were transacted between 1973 to February 1974, which according to the private valuer, was the period of the land boom in Kuantan where he admitted prices tended to be speculative and fictitious. The subject lot is also less strategically situated as a hotel site than Lots 2185 and 2186, being further away from the sea and the amenities thereat. It is difficult to see how, if not for the sea and the beaches, Kuantan would not be just like any other small Pahang town. Internationally hotels like the Merlin and the Hyatt are being built by the sea which seem only to bear this out. But in 1973, these hotels were not in existence yet. Since hotel sites could still be obtained by the sea at the relevant times, any potential purchaser would not venture to build one inland, a mile or so away from the sea. The owner says he was going to build the hotel on the land but the criterion is not what he was going to do with his land, but whether a potential buyer in the market would buy it as a site for a hotel in 1973. The principle of market value cannot be set aside in the face of an owner saying he could develop the land for the purpose for which the land is authorised to be used unless it is indeed feasible as such.

The validity of Lots 2185 and 2186 must be tested against the value of Lot 5176 (formerly Lot 2100) cited by the government valuer, situated opposite the Survey Office, at the junction to the main road to Beserah. The land had been converted and approved for housing. The site was approved for a hotel, petrol

station, eight units of shops, terraced and detached units. There were three recorded transactions respecting the land but the latest, even as late as March 1977, almost four years after the date of acquisition, was at $54,000 per acre. The credibility of this transaction had not been questioned by the objector. It is accepted that this lot cannot be compared exactly in the same category as Lot 2185 and Lot 2186 since the latter are, as stated earlier, better situated than Lot 5176. But even giving allowance for their respective situations, I think the difference in value between Lots 2185, 2186 and 5176 is so great that that much difference cannot really exist between one land which is for building a hotel and another which is essentially agricultural in use in Lots 2185 and 2186. But if the comparative value of Lots 2185 and 2186 are in some doubt, then resort to them for determining Lot 2184 would be an error. The government valuer had valued Lot 2184, using Lot 4281 and Lot 4284 as the basis at $25,000 per acre, adding, however, another 80% to the value as being its converted value as a hotel. In my view, this method was fair and reasonable so long, however, as it was conceded that Lot 4284 physically was at par with Lot 2184. But, as one would notice, this could not be so. As stated by the private valuer, Lot 4284 was lower than the road level by about two feet when filling would be required. Lot 4281 has a stream running through it. Lot 2184 was, as confirmed by the valuers, above the road level and rose gradually to the rear. Lots 4281 and 4284, therefore, contrary to what was reported by the government valuer, were not possessed of similar features as the lands acquired.

In the circumstances, I hold that an increase of slightly over 96% over $25,000 as the converted value of Lot 2184 would be fair and reasonable. In the circumstances, I would increase the amount of the award from $45,000 per acre to $50,000 with interest and costs as distinguished from Mr. Yap Ah Chai's valuation at $60,000 per acre.

From the above judgment the objectors in Kuantan — Land Reference No. 4 of 1977 appealed to the Federal Court.

FEDERAL COURT.

Ahmad Shah Balendran for the appellants.

Tengku Baharuddin, Legal Adviser, for the respondent.

Suffian L.P. (delivering the judgment of the Court): The Government proposed to build a new hospital in Kuantan, the capital of Pahang. For this purpose they acquired seven pieces of land along Jalan Tengku Muhammad, a small road that links the main Kuantan/Trengganu road with the Jalan Telok Chempedak leading from Kuantan town to Telok Chempedak beach, where there are now two international class hotels, the Merlin and the Hyatt.

Some of the owners objected to the awards of the Collector and asked under section 36(1) of the Land Acquisition Act, 1960, that the matter be referred to the High Court.

So the matter was referred to the High Court.

Seven lots were involved, but only the owners of four lots, namely Lots 2182, 2183, 2184 and 351 took the matter to the High Court, in four separate references.

Three of them were consolidated, and the learned judge valued the lots as follows:

Lot 2182 $28,000 per acre;
Lot 2183 $27,000 per acre; and
Lot 351 $24,500 per acre.

We are not however directly concerned with these three lots, as there has been no appeal to us by the owners.

We are directly concerned only with Lot 2184 the subject of land reference No. 4 of 1977. For this lot, the Collector had awarded $45,000 per acre; in the High Court the owners asked for $4 per square foot ($174,240 per acre); one of the two assessors sitting with the learned judge valued it at $60,000 per acre; and the other assessor and the learned judge valued it at $50,000 per acre.

The owners appeal to us, contending that the land was worth much more than $50,000 per acre, now reduced to $3 per square foot, that is $130,680 per acre.

The issue before the learned judge was, what was the value of the land at the material date which was May 24, 1973? Value must mean market value, which in turn means the price which a willing seller, not obliged to sell, might reasonably expect from a willing purchaser with whom he was bargaining for sale and purchase of the land (*Nanyang Manufacturing Co.* v. *C.L.R. Johore*[1]). It is plain from the notes of evidence and submissions and from the judgment that everybody was aware that the best way of determining this amount is by looking at sales of comparable lands in the vicinity at or about the material date.

What are the questions before us? The questions before an appellate court are usually different from those before a court of first instance. A court of first instance generally speaking is looking for truth, whereas an appellate court is looking for error.

In the case of an appeal against the alleged inadequacy of the value put on land by a trial judge, the questions before us, as explained in *Collector of Stamp Duties* v. *Ng Fah In*,[2] heard in the same week as this one are: in determining the value, has the learned judge acted on a wrong principle, or misapprehended the facts, or has he for some reason made a wholly erroneous estimate of the value of the land? It is not enough if only there is a balance of opinion or preference one way or another; the scale must go down heavily on the ground of insufficiency against the allegedly low value put on the land by the learned judge.

We should be reluctant to interfere with the learned judge's award — because he lives in Kuantan not far from the land, and because out of respect for his local knowledge and experience.

The subject land is held in perpetuity, it is not Malay reservation, it is 3 acres 1 rood and 20 poles

in area, within the Town Board area and about 3½ miles from Kuantan town centre, less than half a mile from the Jalan Telok Chempedak junction and about ¾ mile from Telok Chempedak beach. The R.I.M.V. office, the Assunta Convent, the Istana Mahkota, the Mentri Besar's residence and the golf club are all within a half miles radius of the land.

It has a frontage of about 250 feet onto Jalan Tengku Muhammad. At the frontage it is about level with the road; it then rises to the rear, and the highest point offers a panoramic view of Kuantan. At the material date it was undeveloped and covered with blukar, but piped water and electricity were available along the road.

The area in general is zoned as low density residential and there is subdivision of a few lots in the locality.

The land has been approved for hotel development and the title has been converted. It is this last that is said to make the land particularly valuable.

Encik Ahmad Shah Balendran on behalf of the owners before us stressed that the land is comparable not so much with the many lots mentioned by the learned judge, but more with lands approved for hotel development and he mentioned two such lots No. 2185 and 2186 along Jalan Telok Chempedak across the way from the Istana Mahkota.

The evidence was that Lot 2185, 2.3125 acres in area, was sold in 1971 at $15,000 per acre; in November 1973 (i.e. about six months after the material date), at $56,216 per acre (about $1.30 per sq. ft.); and in December 1973, for a proposed hotel at $261,357 per acre (about $6 per sq. ft.); and Lot 2186 next door, 2.28 acres in area, was sold in February 1974, at $196,000 per acre (about $4.50 per sq. ft.). Approval to build a hotel on these two lots has been granted, but the titles have not yet been converted. It is said that based on the price paid for them the subject-land should be worth not the $50,000 an acre awarded by the learned judge, but $3 per sq. ft. ($130,680 per acre).

With respect the learned judge did consider the sale prices of Lots 2185 and 2186; but the court was concerned with price at the material date May 24, 1973; and Lot 2185 fetched only $56,216 per acre about six months later, though it is better situated, being along the Jalan Telok Chempedak on the way to the beach and right near Istana Mahkota, the Rest House and the Golf Club. It is true that about two months later it fetched $261,357 per acre and the adjoining lot $196,000 per acre; but, according to the private valuer called by the owners, between 1973 and February 1974 was a period of land boom in Kuantan when prices tended to be speculative.

Another factor that tends to depress the price of the subject lot is that the viability of a hotel on his land is only a long term prospect, as is evidenced by the fact that though the owners obtained approval for the land to be used for hotel development in December 1970, it remained undeveloped at the material date — as is also the case with Lots 2185 and 2186, to this day, seven years later. This may be due to competition with hotels already at Telok Chempedak beach, in particular the two international class hotels already referred to.

It cannot be said that the learned judge overlooked the fact that this land should be valued as land approved for hotel development, for he valued the two adjoining and similar lots Nos. 2182 and 2183 at $28,000 and $27,000 per acre respectively. He valued the subject lot at almost twice each of these two lots.

We have considered carefully the learned judge's reason for his award. In our judgment he has applied the right principles and has not acted on wrong principles; he has not misapprehended the facts which he detailed and weighed at length; nor has he made a wholly erroneous estimate of the value of the land.

For the above reasons we would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Balendran & Chong.*

SYARIKAT PERNIAGAAN SELANGOR SDN. BHD v. FAHRO ROZI MOHDI & ORS.

[F.C. (Chang Min Tat, Salleh Abas & Abdul Hamid F.JJ.) January 12 & 30, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 204 of 1978]

Torts — Injunction — Nuisance from noise — Music bands and discotheque — Injunction granted.

The respondents had brought an action against the appellant to prevent it from so using its land as to cause annoyance by noise to the neighbouring landowners. They applied for an injunction to restrain the appellant or its servants from operating or permitting to operate (a) music bands with singers from open air stages and (b) the generator for the discotheque on its land until the trial of the action or until further order. The learned trial judge granted the injunction and the appellant appealed.

Held, dismissing the appeal: the learned trial judge was entitled on the evidence to find that the noise was excessive and intolerable and was an actionable nuisance and that the respondents were entitled to the injunction.

Case referred to:-

(1) *Kennaway* v. *Thompson* [1980] 3 W.L.R. 361, 366.

FEDERAL COURT.

C.F. Chin for the appellant.

Chong Kok Hon for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. delivering the judgment of the Court): This is an appeal from the decision of the High Court to grant an injunction against the appellant to prevent it from so using its land as to cause annoyance by noise to the neighbouring landowners. Specifically, the order restrains the appellant and its servants and agents from operating or permitting to operate (1) music bands with singers from open air stages and (2) the generator for the discotheque on its land until the trial of the action or until order. Behind the first limb of the order is clearly the electronic amplification of live music and songs.